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The Solicitors' Journal

[Established 1857.] [Registered as a Newspaper.]

VOL. LXXVIII. No. 36 [Pages 621 to 636]. Saturday, September 8, 1934. Published Weekly. Price One Shilling.

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Current Topics.

Royal Marriages.

THE engagement of PRINCE GEORGE and PRINCESS MARINA is a national event, the announcement of which has been received throughout the Empire with an enthusiasm which demonstrates once again the whole-hearted loyalty of His Majesty's subjects and the interest taken by them in all that concerns the happiness of the royal house. It would be noticed in the announcement that the engagement had received the approval of HIS MAJESTY THE KING, such approval being essential to the validity of the marriage of any member of the royal house; this is by virtue of the Royal Marriages Act, 1772, which, in its passage through Parliament, evoked strong opposition, and which later was described by constitutional lawyers as quite indefensible in principle. The Act provided that no descendant of GEORGE II (except the issue of princesses married into foreign families) should be capable of contracting matrimony without THE KING'S previous consent, signified under his sign-manual and declared in Council; and that any marriage contracted without such consent should be null and void. The Act contains a very curious proviso, which enables a member of the Royal Family, above twenty-five years of age, to marry without THE KING'S consent, after having given twelve months' previous notice to the Privy Council, unless in the meantime both Houses of Parliament should signify their disapprobation of the union. Needless to say, no occasion for invoking the liberty, if so it can be called, of this provision has arisen. The Act, which excited strong feeling at the time it was before Parliament, was due to the initiative of GEORGE III, whose personal will triumphed over all opposition, whether of argument or numbers, and it is said that he was implacable against all who opposed it. Happily, as it turned out, the Act, although difficult to approve in principle, has worked no hardship in the past, and it is unlikely that it will do so in the future.

Ordnance Survey.

IN these days when, in KINGSLEY'S phrase, "term and talk are done," and members of the profession are scattered far and wide throughout the land in search of invigoration of body and of mind ere October comes with its fresh call to work, there is a certain topical interest in the report, just issued, of the progress made by the Ordnance Survey for the past year, for the name "Ordnance Survey" calls up for most of us the excellent maps constructed and issued at extremely modest prices by that Department whose name, however, like that of several other organisations of the Government, may not to some be self-explanatory, being derived historically from the fact that the survey of the country was originally under the direction of the Master of the Ordnance. While to most of us, at all events when on holiday bent, the maps bearing the imprint of the Ordnance Survey Office make their most potent appeal as giving us a bird's eye view of the particular section of the country in which we happen to be holidaying, the more utilitarian value of much of the work performed by the Survey must not be forgotten. For example, as the report tell us, no fewer than seventy-five special surveys were undertaken for tithe redemption, a considerable number were carried out for the Board of Trade in connection with questions relating to the foreshore, while nearly four thousand Land Registry cases were surveyed for that department. In the past the courts have shown considerable reluctance about admitting maps, even those of the Ordnance Survey, as evidence of their contents. It is true that in *Attorney-General* v. *Antrobus* [1905] 2 Ch. 188, these were admitted, somewhat superfluously it might be thought, as evidence "of the existence of a visible track across the land," but recent legislation, particularly the Rights of Way Act, 1932, has empowered the court, in determining whether a way has or has not been dedicated as a highway, to take into consideration any map or other relevant document tendered in evidence, and to give such weight thereto as it may think proper in the circumstances. The language of the section seems to point rather to the admissibility of ancient maps, but it is conceived that modern surveys carried out by the Department will not be excluded merely because they are modern inasmuch as those concerned with their preparation are scarcely likely to be influenced by local disturbing elements.

Subsidence by Coal Mining.

THE importance of the various factors which, either alone or in conjunction, constitute the "necessary implication" required, in the absence of express grant or reservation, for the letting down of the surface of lands overlying mining operations is not easily estimated. One of them—the right to abstract coal—has been recently considered by the Court of Appeal and presents unusual difficulties owing to divergent views of fact. The carrying on of mining operations at depths which would not have been contemplated a hundred years ago (and Acts or instruments of severance upon which the respective rights of surface and mine-owner depend are frequently older) has materially altered the position, while the commercial aspect of the matter to-day renders more than ever undesirable the leaving unworked of large quantities of the mineral as pillars for the support of considerable areas. It is now generally recognised that the long-wall method of working, besides being more desirable than the pillar-and-stall in effecting a more complete abstraction of the coal, is ultimately less destructive of the surface, which it lets down more evenly. Until comparatively recent times the proposition that the existence of a power to work out coal in however large terms would not, of itself, displace a surface owner's right to have his land supported seemed to be clearly established; but in

Welldon v. *Butterly* [1920] 1 Ch. 130, ASTBURY, J., drew the inference of a necessary implication from terms relating to the reservation and working of minerals in an Inclosure Act of 1791, and from evidence, which he accepted, to the effect that coal-mining by any method inevitably causes subsidence. Long-wall working had been in operation in the district prior to the date of the Act. There was no question of setting up a new legal principle. The learned judge explained that he was applying "legal principles long settled, and really indisputable" to the scientific facts established in evidence. The decision in the recent case of *Warwickshire Coal Co.* v. *Coventry Corporation* [1934] 1 Ch. 488, indicates, however, that a conclusion that a right to abstract coal necessarily involves a right to cause subsidence would be fallacious. In this case ownership of surface and minerals was severed by a conveyance pursuant to a statute which required reservation of the latter with "proper and necessary powers" to work them, and the Court of Appeal, dismissing an appeal from a decision of CLAUSON, J., held that the surface owners, who had developed their land as a building estate, had not been deprived of their right to support at common law. It should be added that since the Mines (Working Facilities and Support) Act, 1923, the existence of a common law right of support does not necessarily prevent the working of underlying or adjacent minerals, the Act contemplating applications for a right to let down the surface in appropriate circumstances.

The Coal Trade.

IN the course of an address given at the Bonar Law College at Ashridge towards the end of last month, Mr. A. W. ARCHER, Vice-President of the West Yorkshire Coalowners' Association, advocated an international agreement between the principal coal-producing countries of Europe. It was pointed out that the fundamental principle—division of markets—was agreed to in general terms, but each country's idea of what constituted a fair share of the total trade naturally varied. Mention was made of the imminence of a new coal law in Germany which would bring the whole industry under a single control, of a proposed drastic reorganisation of the industry in Belgium, including the establishment of a State bureau for output, imports, exports and distribution, of a report of the preparation by the Dutch government of measures to assist the Limburg coalfield and to establish a quota for foreign coal, of the re-organisation contemplated in Spain, and of the distressing economic position of the French and Polish coal industries. Mr. ARCHER said that experience had proved that regulation of output could not produce stability if divorced from control of prices and contended that an economic price level was the primary need. He thought that trade agreements had been abundantly justified and had secured trade which would otherwise have been lost. An international agreement was the natural complement of trade agreements. The desirability of such an agreement would appear to be supported by the joint audit of the results in the South Wales coalfield for the quarter ending July, which reveals an aggregate loss of £31,609, or ·93d. per ton, as opposed to a profit of £34,190, or ·94d per ton in the previous quarter. Mr. F. A. GIBSON, the Secretary of the Monmouthshire and South Wales Coalowners' Association, points out that under the stimulus of direct and indirect subsidies and reciprocal trading pacts German and Polish exports have increased considerably this year in markets which previously used Welsh coal. The enormous expansion in German shipments to Italy during the past twelve months has, it is stated, had an even more disastrous effect on the Welsh export trade. Northumberland, Durham and Scotland, however, are in a position to show that their export trades have benefited from the trade agreements with Germany and the Baltic countries. These trade pacts have not, it is indicated, benefited South Wales, which had suffered seriously by the purchase of German and Polish coals in French, Mediterranean and South American markets. While the advantages of an international coal agreement regulating output and prices are not easily gainsaid, it would be idle to ignore the enormous difficulties which stand in the way of satisfying the various conflicting claims or harmonising so many divergent interests.

Imprisonment Pending Appeal to Court of Criminal Appeal.

THE recent protest in the public press against the treatment of the proprietor of a well-known preparatory school whilst waiting for his appeal to be heard by the Court of Criminal Appeal serves to show how easily an innocent man may be made to suffer the great hardship of an ordeal of prison life. The appellant was convicted in May upon the evidence of two small boys, though he emphatically denied the charge and even the parents of the boys were incredulous of the story. Being found guilty and sentenced to eighteen months' imprisonment he was sent to Wormwood Scrubbs, where, according to his own statement, he was "herded with convicts after years of public life and a distinguished award for public service," and it was not until he had served some time in this uncongenial society that his application for bail pending appeal was granted. The Lord Chief Justice, delivering judgment on the appeal, quashing the conviction, said that part of the evidence against him was so incredible and the rest of it appeared so extremely improbable that it ought not to have been accepted without corroboration. We cannot help thinking that when a man of this character and status has been convicted of an offence and desires to appeal, he should not, pending application for bail, be treated as an ordinary prisoner serving a sentence.

The Noise Regulations.

THE latest steps taken by the Minister of Transport to deal with the noise problem have secured general approval, and distinct benefits have already been felt in the direction of the reduction of a public nuisance. Whether the innovation will also result in the reduction of the number of road accidents, as it is said to have done in Helsingfors, where a 50 per cent. reduction is claimed, remains to be seen. The Minister made the new regulations acting under powers given to him by s. 9 of the Road Traffic Act, 1934, in addition to the powers to make regulations already conferred upon him by s. 30 of the Road Traffic Act, 1930, and extend to the "making, in relation to appliances for signalling by sound, of different regulations as respects different times of the day or night and as respects roads in different localities and of regulations prohibiting their use at any times, and on or in any localities, specified in the regulations." On 23rd August, 1934, the Minister made regulations under that section prohibiting the use, between 11.30 p.m. and 7 a.m., of horns or other warning instruments on motor vehicles within a radius of five miles from Charing Cross. On 31st August, 1934, it was announced by the Secretary to the Minister of Transport that in view of the practical experience of the working of this experiment and the strong representations in favour of its extension which had reached him from numerous quarters, the Minister had now made amending regulations under which the prohibition is made applicable to all roads throughout Great Britain in "built-up" areas, that is to say, roads on which there is provided a system of street lighting furnished by means of lamps placed not more than 200 yards apart. If the observance of the regulations would be likely to hinder the use of a vehicle for fire brigade, ambulance or police purposes, the regulations are not to apply in such a case. The regulations are to come into force on Sunday, 16th September. Many invalids and light sleepers will have reason to thank the Minister for his timely exercise of the new powers, and it is to be hoped that a real beginning has at last been made towards tackling one of the most serious problems of the age.

The Order of Application of Assets.

I.

In none of the decisions in which the provisions of s. 34, sub-s. (3) and Sched. I, Pt. II, of the Administration of Estates Act, 1925, have been interpreted does there appear any attempt to discover whether the draftsman had in his mind any rational principle of arrangement. His problem was obviously to discover some standard by which the various classes into which any solvent estate may ordinarily be distributed may be arranged in an orderly ascending or descending sequence. The standard adopted is clear on the face of the Schedule. It is that the more definitely and precisely the testator has indicated the objects and extent of his benevolence, the less must the burdens incident on the estate be allowed to interfere with that benevolence. As an expression of the probable desires of a testator this is psychologically sound. It is a principle which has been consistently urged at the Bar since *Fisher* v. *Fisher*, 2 Keen 610, but has never found acceptance in the courts.

Paragraph 1 deals with property which passes not by the will of the testator but by mere operation of law. With regard to such property the Legislature has declined to endorse the opinion of Malins, V.-C., that "the rule that descended estates are liable for the payment of debts in priority to the specifically devised estates is a very unreasonable one." It has indeed extended the rule by applying it to all property undisposed of by will, thus altering the law as laid down in *Milnes* v. *Slater*, 8 Ves. 295, and *Phillips* v. *Parry*, 22 Beav. 279. As Maugham, J., said in *In re Kempthorne* [1930] 1 Ch. 268: "It is plain that the old law as to the application of assets is there being altered to the detriment of people entitled on an intestacy." It is clear that normally we need not expect to find in any will a provision which will displace the presumption under this paragraph. Partial intestacy is almost always the result of an accident arising from a statutory disqualification of a beneficiary or his premature decease and can seldom be within the contemplation of the testator. There are exceptional cases, such as *Stead* v. *Hardaker*, 15 Eq. 175. And one can easily enough suppose a case in which a testator, while prepared to make a will for the regulation of his affairs after his death, might decline to act as a posthumous providence by controlling the devolution of his surplus property. Take the case of a childless man who says: "I do not know what the state or the needs of my family circle may be at my death. I will make provision that my executors shall utilise some definite property to pay my debts; and the rest of my property, freed from my debts as far as the appropriated property may extend, I leave undisposed of to go as fortune and the law may direct." Here is a possible and indeed a reasonable provision which will displace the operation of para. 1. But it is submitted that on the plain wording of the Act nothing less than the conscious contemplation of the fact that some property may or must go as on intestacy and a direction expressly exonerating such property from the payment of debts will have that effect. Paragraph 8 says that the order of application may be "varied" by the will of the deceased. It would be contrary to commonsense to say that a man had "varied" something which he had never had in his contemplation. Whatever provisions there may be in a will they must be read as applying to that state of things to which the testator contemplated them as applying, and if a circumstance intervenes which brings into existence a state of things covered by the Schedule but not contemplated by the testator, it seems a mere deduction of commonsense that the Schedule should prevail. It will be observed that in any will in which there is a true residuary clause it is only with regard to a lapsed share of residue that this paragraph will apply.

Paragraph 2 deals with the case in which the objects of the testator's benevolence are ascertained, but in which owing to the form of expression and to the ambulatory operation of a will the property given remains uncertain. The relative positions of this paragraph and of paras. 3 and 4 may perhaps occasion doubts, not indeed as to the meaning, but as to the policy of the scheme. But it is to be remembered that in practice residuary gifts are of two kinds. A man may, to the best of his knowledge of the extent of his property, make a complete and detailed disposition, and any residuary clause may be merely a provision *e majore cautela* in case anything has been overlooked. In such a case it may be said that any benefit accruing is a mere matter of luck and may fairly be saddled with burdens even to the exoneration of gifts falling under para. 3. On the other hand, a residuary gift may be, and often is, the main vehicle of the testator's beneficence. Instead of making definite and adequate provision for the primary objects of his beneficence, in too many cases the testator provides primarily for the miscellaneous objects of his charity, relegating his family to a residuary clause. This may make for easy conveyancing and, in cases where, in the event, the residue bears to the pecuniary and specific legacies a proportion conformable to the testator's expectations, may work no harm. But often, and more particularly since the recent slump in the value of securities, legacies and annuities are found in the event to swallow up the estate and leave little or nothing for widow and family. In such a case it seems hardly fair that the mere description of a gift as "residuary" should render it subject to debts in priority even to property specifically appropriated. Such a result can, of course, be obviated by the use of apt words such as the addition to a specific appropriation or charge of the phrase "in exoneration so far as it will extend of all other my estate including residuary gifts." In effect there will rarely be any practical conflict between residue and property appropriated under para. 3, for in almost every case such specific appropriation will take the form of a trust so that if, by reason of a residuary gift, the trust property is exonerated from the payment of debts there will be a resulting trust of the beneficial interest which will then be caught by the residuary gift.

Paragraph 3 covers such a case as that in which the wise testator has provided a fund of securities, not liable to fluctuation in value and easily convertible, for the purpose of facilitating the winding up of his estate. *Phillips* v. *Parry*, 22 Beav. 279, offers another type and illustrates the change which has been made by the new law. As already pointed out a provision of this sort, in the absence of express direction, will not normally carry any beneficial interest, and any surplus or the whole, if not required for the payment of debts by reason of an intestacy or the presence of a residuary gift which has not been given express preference, will go as on an intestacy or fall into residue, as the case may be.

With para. 4 we come to gifts where both the donee and the extent of the bounty are defined, and where in contrast to property falling under para. 3 there is a gift of a beneficial interest. In regard to this paragraph it is necessary to bear in mind the provisions of s. 35 dealing with charges subsisting at the time of the testator's death. In view of that section it would seem that the words "charged with, or" are otiose, for it is only by devise or bequest that the testator can transmit any part of his property as charged.

In view of certain remarks made in the Court of Appeal in *In re Kempthorne*, it is necessary to consider what is meant by a charge of debts under this paragraph. The mass of decisions designed to translate vague expressions into express directions that real property should bear its share in the burdens on an estate are not in point. Appropriations for the payment of debts or charges of debts are not matters which affect the creditors of the estate. They are matters of internal arrangement within the estate. Vis-à-vis the creditors the whole estate is charged with debts; and directions given by the testator are directions to the executors to exonerate, so far as may be, those parts of the estate not appropriated or

charged. A charge for the purpose of the paragraph means no more than this, that the executors must, if the debts are not already provided for out of property primarily charged by the Schedule, deduct these before distributing the particular fund charged. Such deduction may in appropriate cases be effected by means of the machinery provided by s. 36, sub-ss. (9) and (10). Charge is correlative to exoneration and wherever there is expressly or by implication an exoneration there is a charge on whatever is not exonerated.

Paragraphs 5 and 6 call for no special comment. Their relative position is fixed by the fact that in the case of specific legacies the testator has defined not only the value but also the actual form of his gift, presumably with reference to the special circumstances of the donee. The personal gift may be supposed to be nearer to the heart of the testator than the impersonal gift of money, just as the bride may be supposed to value Aunt Mary's plated tea-pot more than Uncle George's money order. Such considerations may be beneath the dignity of the courts, but they are not necessarily outside the purview of the Legislature or alien to the psychology of testators. Some confusion may result from the fact that the courts treat a pecuniary legacy when it takes the form of the gift of an aliquot part of a fund as specific.

Paragraph 7 deals with property in which, were it not for the will, third parties would have an interest. One may perhaps doubt whether, as the act of the testator has virtually made such property his own, it should not have been left to the operation of paras. 5 and 6.

Finally para. 8 gives full play to the idiosyncrasies of testators. The testator who knows the facts and can foresee possibilities can provide for the payment of his debts outside the scheme of the schedule. Section 35, sub-s. (2), may reasonably be referred to for the standard of definiteness which the Legislature expects the courts to require before finding a direction to vary the order of the schedule. The Legislature says in effect: "We have provided a scheme which we believe will be accepted as rational by the majority of testators and in the absence of clear indication to the contrary the court shall presume that the testator has adopted it."

Costs.

COUNTY COURT SCALES—(*continued from p. 528.*)

It will have been seen that the judge is given discretion to allow costs on a higher scale than would otherwise have been applicable where he certifies in writing that the question involved was of importance to some body of persons or was of more than ordinary interest (see s. 119). In a taxation as between solicitor and client the registrar has a discretion to increase certain items within the appropriate scale, a subject which will be dealt with hereafter, but he has no discretion to go beyond the scale applicable to the sum involved (see s. 118), unless he is satisfied that the client has agreed in writing that some other scale shall be applicable. This last-mentioned provision is likely to prove abortive, for, as will appear hereafter, the registrar has a discretion to increase *any* items in columns B and C, so that if he sees fit he may increase so much of a bill taxed under column B as will make it difficult to distinguish from a bill taxed under column C.

An interesting case on this point is *In re Langlois & Biden* [1891] 1 Q.B. 349. In that case the plaintiff claimed a sum of £15, the debt due on a promissory note, but he obtained judgment for £5 only. The costs were accordingly taxed as between party and party on the lower scale, but the plaintiff's solicitor, in rendering his bill to his client, made out his costs according to column A of the higher scale, but with this the registrar disagreed and allowed the costs only on the lower scale. On appeal to the Court of Appeal it was held that where the sum claimed exceeded £10, but the sum recovered was less than £10, then the registrar had a discretion to allow costs on the higher scale. The Master of the Rolls made it clear that the higher scale would not apply as a matter of right, and would certainly not apply where the solicitor wilfully brought an action for a larger amount than he knew could be recovered. Whether this ruling would apply with equal force in respect of actions falling wholly within the higher scale is a matter of doubt. The decision was based entirely on the discretion inferentially vested in registrars by virtue of the note at the end of the lower scale, although the principle which emerged to the effect that a solicitor should not be prejudiced in cases where the client has wilfully concealed some material fact, would seem to apply to cases which fall wholly within the higher scale. Thus, if a solicitor is induced by the non-disclosure of some material fact to bring an action on a client's behalf, for £60, when all that the client was entitled to and all that he obtained judgment for was £15, then the solicitor, according to the dicta in the case cited, should be entitled to make up his solicitor and client bill according to column C, although he will only be entitled to recover from the defendants his costs under column A.

Rule 1 of Ord. 53 provides that the costs of any action in any court shall be taxed by the registrar of that court according to the scale of costs set out in the appendix, subject to the review of taxation by the judge. It may be taken as a general rule that the judge will not interfere with the discretion vested in the registrar on a mere matter of *quantum*. Where the registrar has exercised his discretion, and in the absence of any suggestion that he has acted on a wrong principle, the court will not interfere (see the case of *Frankenburg* v. *Famous Lasky Film Service* [1931] 1 Ch. 428). Nor may the registrar interfere where the judge has specifically given directions for the allowance of certain items on a scale which would, but for the judge's directions, have been inapplicable.

Very wide discretion is given to registrars in the taxation of costs by r. 8 (2) of Ord. 53, which must be read in conjunction with r. 23 of the same order. The former rule provides that where costs are taxed under columns B or C then the amounts allowable under *any* item in the scales may be increased by a reasonable amount at the discretion of the registrar, subject to review by the judge. Rule 23 indicates the matters which the registrar is to take into consideration in the exercise of his discretion. He may pay due regard to the other fees allowed to the solicitor and counsel, the nature and importance of the matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and cost of the proceedings, and all other circumstances.

Notice in the first place that the registrar has discretion only as regards columns B and C and that where column A is applicable then the scale must be strictly adhered to. Apart from this restriction he appears to have unlimited discretion so far as *quantum* is concerned, and although his taxation may be reviewed by the judge, the latter will not interfere except on a question of principle.

We recently published a letter from a subscriber (78 Sol. J. 534) dealing with this question of the registrar's discretion and its effect in certain cases. In that case the costs of objections to taxation were taxed at nearly as much as the bill for the whole action.

Undoubtedly the taxation of both bills was quite in accordance with the rules, and the argument that the review was not an action, but only an interlocutory application, was not of much avail since an interlocutory application is clearly a proceeding in an action.

We will deal in our next article with those cases where the action is brought in the High Court but the claim is within the county court scale.

Mr. Lewis Ward, solicitor, of Liverpool, left £15,246, with net personalty £14,601,

Company Law and Practice.

Directors' Qualification Shares.

I HAD occasion last week to mention briefly the liability of directors in respect of qualification shares, and I think the topic as a whole is worthy of a little more detailed investigation. The first point to be noticed and one, I believe, which is not always borne in mind, is that there is no rule of law requiring that a director should be a shareholder. Practice, however, in the shape of the articles of association, almost invariably requires a qualification, acting on the not very high but equally not very inaccurate view of human nature, that a person who has a say in the management of an undertaking and in the application of its funds will probably show more care and industry if his personal interests are involved. Further, the existence of a share-holding qualification is a condition for a quotation on the London Stock Exchange.

Table A, cl. 66, of the 1929 Act says that the qualification of a director shall be the holding of at least one share in the company, but for the reason I have suggested above, something more than a nominal qualification will commonly be required by particular articles of association. A clause which states merely that a director's qualification shall be the holding of a specified number of shares does not compel a director to take such shares from the company; it is sufficient if he obtains them by purchase on the market or by transfer in the ordinary way: see per Mellish, L.J., in *Brown's Case*, L.R., 9 Ch., App. 102, at p. 109. It must be remembered, however, that it is a breach of trust for a director to accept qualification shares from a promoter, and in such a case he may be held liable to pay damages to the company; but this would not apparently invalidate the effectiveness of such shares as a qualification holding. Nor, it may be added, does the fact that the director holds the shares jointly with another or others prevent those shares from serving as qualification shares: *Re Glory Paper Mills Company* [1894] 3 Ch. 473. But the bearer of a share warrant is not for this purpose the holder of the shares specified therein.

Although, as we have seen, the law does not require the holding of a share qualification, yet where this is required by the articles, certain statutory provisions do apply. It will be remembered that in the case of a public company, by virtue of s. 140 of the 1929 Act, a person cannot be appointed a director by the articles or named in a prospectus as a director unless he has not only delivered to the registrar a signed consent to act as director, but has in one way or another taken and paid for or agreed to take and pay for his qualification shares. By s. 141, where articles require a share qualifition, every director must obtain his qualification shares within two months after his appointment or within a shorter period if the articles so prescribe, and if he fails to do so or if he ceases at any time to hold his qualification, he will vacate his office and will be incapable of re-appointment until he obtains the necessary shares. Further, if he acts after the expiration of the time mentioned without being qualified, he is liable to the not inconsiderable fine of £5 a day up to the last day on which he acted as a director.

The provisions of this section are straightforward enough, but what is their effect on a case where a company by special resolution increases the number of shares required as a qualification? This question arose in *Molineaux* v. *The London, Birmingham and Manchester Insurance Company Ltd.* [1902] 2 K.B. 589, on the provisions of the corresponding section of the Companies Act, 1900. There, the plaintiff, a director, held the necessary qualification under the articles of fifty shares. Special resolutions were passed for increasing the company's capital and for raising the qualification for a director to 250 shares. The plaintiff did not acquire the additional amount. The Court of Appeal held that the plaintiff had not vacated his office of director within the meaning of the section, either by failing to obtain the necessary qualification or by ceasing to hold it; it was pointed out that "the opposite view would lead to the strange result that a prosperous company increasing its capital and also the qualification of its directors might find that the passing of the special resolution instantaneously vacated the office of every director and left the company without any executive." It was held further, however, that on the facts the plaintiff had, with knowledge of the necessary qualification, continued to act as a director and must be held to have contracted with the company to obtain the requisite shares within a reasonable time; that a reasonable time had in the circumstances elapsed, and he had rightly been put on the register in respect of the additional shares.

In order to arrive at the latter part of the decision in *Molineaux's Case* it will be observed that a contract had to be implied; this recalls the topic with which I have been concerned in these columns during the last two weeks. We came to the conclusion, as you may recollect, that the articles of association do not themselves constitute an agreement between the company and a member acting in a capacity other than that of a member, e.g., a director. In the absence of express contract it follows that there is no *actual* agreement to take qualification shares; but you may look at the articles of association to find out the terms on which a director is serving, and one of those terms will be the holding of qualification shares. The authorities do not seem to me to be entirely consistent, but the position may, I think, be stated thus: if the director accepts office, either expressly or by acting as director, he is inferred to make an offer to take the qualification shares. To render the contract complete that offer must be accepted by the company by an allotment of the shares and due communication thereof to the director; but it has been held to be sufficient acceptance of the offer and communication of that acceptance if the company places his name on the register of members while he is a director (see *Brown's Case, supra, Re Portuguese Consolidated Copper Mines Ltd.* [1891] 3 Ch. 28). Further, it has been held that where the articles contain a clause, which is by no means uncommon, that if a director does not qualify within a specified time he shall be deemed to have agreed to take the shares from the company, that is sufficient to impose the liability to take the qualification shares if the qualification has not been obtained within the time named. That is the case of *Re Anglo-Austrian Printing and Publishing Union* [1892] 2 Ch. 158, to which I had occasion to refer last week.

The precise effect on these authorities of the provisions of s. 141 of the Act does not seem to have been determined. It will be observed that under that section the office of director is vacated if the qualification shares are not obtained within the time specified by the articles. Will such vacation of office also terminate the liability to take qualification shares which have not been allotted? Not, it is submitted, if in accordance with the authorities mentioned the contract to take them is complete. "Palmer's Company Precedents," 14th ed., p. 669, suggests, however, that if the shares had not been allotted before winding up commenced the ex-director would not be held liable to be placed on the list of contributories. This would seem to accord with the decision in *Re R. Bolton and Company* [1894] 3 Ch. 356, where the relevant article provided that a director was to acquire his qualification within three months from his appointment, and unless he should do so he was to be deemed to have agreed to take the shares from the company. A majority of the Court of Appeal held that directors who resigned within the three months were not liable in a winding up to be placed on the list of contributories for their qualification shares, no allotment having been made to them before winding up.

One or two other provisions in articles with reference to qualification shares are worthy of a moment's attention. Sometimes the relevant article runs not in the form of cl. 66

of Table A, but to the effect that "no person shall be eligible (or qualified) as a director" unless he holds the specified qualification. This makes the holding of the shares a condition precedent to the election of a director and the appointment of a person not holding the shares would be void: see *Jenner's Case*, 7 Ch. D. 132. As he would not be a director it seems that s. 141 of the 1929 Act would not apply; and it also seems to follow that there can be no question in such a case of implying a contract to take the shares so as to impose liability therefor.

Sometimes again the articles require a director's qualification shares to be held "in his own right." The same interpretation of these words has not always commended itself to different judges. In *Pulbrook* v. *Richmond Consolidated Mining Company*, 9 Ch. D. 610, Jessel, M.R., held that this did not necessarily involve beneficial ownership: the company cannot look behind the register as to the beneficial ownership, and therefore a trustee shareholder would be qualified. The phrase, however, would exclude persons who by law or under the articles are registered as members not in their own right, but in the right of other persons, e.g., personal representatives or a trustee in bankruptcy. Despite the dissent from this view of the words which was expressed by Cotton, L.J., in *Bainbridge* v. *Smith*, 41 Ch. D. 462, it is now followed, the test being in the words of Buckley, J., in *Sutton* v. *English and Colonial Produce Company* [1902] 2 Ch. 502, at p. 506, that while the holder in his own right need not be beneficial owner "he must be a person who holds shares in such a way that the company can safely deal with him in respect of those shares, whatever his interest may be in the shares."

A Conveyancer's Diary.

Class Gifts—Substitutional Bequests.

THERE have been some interesting cases upon the subject of substitutional gifts to a class which I had occasion to consider recently. I have, I think, written on this before, but it may be worth while referring to it again.

The leading case is *Christopherson* v. *Naylor* (1816), 1 Mer. 320.

In that case there was a bequest to "each and every the child and children of my brother and sisters which shall be living at the time of my death; but if any child or children of my said brother and sisters shall happen to die in my lifetime and leave issue, then the legacy or legacies hereby intended for such child or children so dying shall be for his, her or their issue."

It was held that the issue of the children of the brother and sisters took only by substitution. Therefore, only the issue of such children as were living at the date of the will were entitled in the event of the death of their respective parents during the testator's lifetime.

Some of the testator's nephews and nieces died in the testator's lifetime and before the date of his will leaving issue who survived him. These issue claimed to be entitled to the legacies which their respective parents would have taken if they had survived the testator. Their claim failed.

Sir William Grant, M.R., said: "The question in this case does not depend on the words '*shall* happen to die in my lifetime.' Though, according to strict construction, importing futurity, those words might have been understood as speaking of the event, at whatever time it may happen. But the context necessarily excludes this construction. The nephews and nieces are here the primary legatees. Nothing whatever is given to their issue except in the way of substitution. In order to claim, therefore, under the will, these substituted legatees must point out the original legatees in whose place they demand to stand. But, of the nephews and nieces of the testator, none could have taken besides those who were living at the date of the will. The issue of those who were dead at that time can, consequently, show no object of substitution; and to give them original legacies would be, in effect, to make a new will for the testator."

Generally, the strict wording of a will in such a connection will be followed. So, "shall die" will not usually be construed as meaning "shall have died." That construction, however, must give place to other considerations when there is something in the will which points to another interpretation as that which the testator really intended to express.

Then there is *Loring* v. *Thomas* (1861), 1 Drew & Sur. 497, which is the case usually cited in this connection.

In that case there was a gift of a fund to the children of A, the children of B, the children of C, and the grandchildren of D, with a proviso that if any child or children of A or B or C or any grandchild of D "shall die in my lifetime leaving any child or children who shall be living at my decease and who shall live to attain the age of twenty-one years, then and in such case, it is my will that the child or children of each of such child or grandchild so dying in my lifetime shall represent and stand in the place of her or their deceased parent or respective parents, and shall be entitled to the same share or shares . . . which his, her or their parents would have been entitled to if living at the time of my decease."

It was held that the proviso was sufficient to make it plain that the child of a child who was dead at the date of the will was entitled to the share which its parent would have taken, and that the words "shall die" were not in that will to be taken as meaning death in the future but meant "shall have died" or "shall be dead."

It seems to follow that where a testator uses language so wide and general as to apply equally to a predeceased child as to one living at the date of the will, then the substitutionary legacy will take effect; and the decision appears to go further and to establish the proposition that the words "shall live to attain the age of twenty-one years" used in a gift in a will are not necessarily words of futurity but will generally be construed as meaning "shall die" or "shall have died," within the age mentioned.

The latest case is *Re Walker* [1930] 1 Ch. 469.

A testator by his will directed that after the death of his wife, his trustees were to stand possessed of his residuary estate for all his children in equal shares "provided nevertheless in case any child of mine shall die in my lifetime leaving issue living at my death, such issue shall stand in the place of such deceased child, and shall take equally between them if more than one the share of my residuary estate which such deceased child of mine would have taken if he or she had survived me." One of the testator's sons died three weeks before the date of the will, leaving one child, a daughter, surviving him, and that was known to the testator when he made his will.

It was held by Eve, J., and the Court of Appeal that there being no context in the will such as a gift to children who "shall attain the age of twenty-one years" the word "shall" must be strictly construed as referring to the future only, and therefore the daughter of the deceased son was not entitled to any share in the residuary estate.

There have been some other cases, e.g., *Re Offlico* [1901] L.T. 758; *Re Cope* [1908] 2 Ch. 1, and *Re Brown* [1917] 2 Ch. 232; which may be consulted. The result appears to be that where the gift of a substitutional nature is to the children of those who shall attain majority, that will be construed as indicating that the words "shall die" mean "shall have died" unless there are clear words making a contrary construction compulsory.

PUBLIC RECORD OFFICE.

The search rooms of the Public Record Office will be closed for cleaning purposes from 17th to 22nd September inclusive. Special arrangements will be made for the transaction of urgent legal business.

Landlord and Tenant Notebook.

Points on Compulsory Purchase.

THE compulsory acquisition of demised land may affect landlord and tenant and their respective rights and obligations in various ways. It is some time since we had a leading case on any of the different points that may arise, and it is possible that some of the authorities one comes across in textbooks have lost some of their force in consequence of changes brought about by new statutes.

The Lands Clauses Consolidation Act, 1845, s. 119, provides for apportionment in the event of part of the demised premises being taken; the rent of what is left is to be settled by two justices if landlord and tenant cannot agree a figure. The benefit and burden of other covenants and conditions remain in force, as regards the part not taken, without modification. But, as regards the part taken, liability continues till actual assignment. A leading case on this point is *Mills* v. *East London Union* (1872), 42 L.J.C., p. 46. This was, in form, an ordinary action of breach of covenant to repair, brought by the landlord covenantee. A railway company served both parties with notices to treat in 1866. The premises were then in disrepair. The lease had a few years to run. The landlord —the plaintiff in the action—gave notice of a claim, but no litigation or arbitration ensued. The tenant resorted to arbitration; an award was made in 1867, but judgment on the award was not entered till 1870, conveyance and possession being given soon after. The substantial issue in the action was, when did the tenant's liability cease? and it was held that it continued till the execution of the conveyance. (A notice to treat, as has been pointed out, has the same effect as a contract of sale.) The landlord accordingly recovered damages measured by the reduction in the market value of the reversion.

When the purchaser is content to acquire the tenant's interest, as may well happen when it is a question of the provision of small holdings or allotments, what becomes of a covenant against alienation without consent? This point first arose in *Slipper* v. *Tottenham and Hampstead Junction Railway* (1867), L.R. 4, Eq. 112, an action for specific performance brought by a lessee who had been served with a notice to treat and made his claim. The company refused to complete because the vendor declined to procure the consent provided for in the lease. The court held that the effect of the legislation was that no consent was necessary.

A different point was disposed of on similar lines in *Bailey* v. *De Crespigny* (1869), L.R. 4, Q.B. 180. This was an action by a tenant against his landlord for damages for breach of a covenant not to permit building on a paddock which adjoined the demised premises. A railway company had compulsorily acquired the paddock and built a station on the site. The defendant was held to be saved by the *lex non cogit ad impossibilia* principle. It may well be that a slightly different ground would be invoked nowadays. The meaning of "permit" in a covenant has been more thoroughly thrashed out: see the "Notebook" of 19th December, 1931, and 16th April, 1932 (75 SOL. J. 862, and 76 SOL. J. 266).

When dealing with licensed premises one has carefully to watch the effect of new enactments on the validity of older authorities. It was held in *Bourne* v. *Liverpool Corporation* (1863), 33 L.J., Q.B. 15, that a landlord was entitled to the value of the "tie" when premises consisting of a public-house were acquired under powers. The house had been let for ten years at £160 a year in 1858, and notice to treat was served in 1862. The award valued the freehold at £3,900 without the tie, the latter being assessed at £400. The court considered that the tie was goodwill and compensation had to be paid for it. Likewise, in *Chandler's Wiltshire Brewery Co. Ltd.* v. *London County Council* [1903] 1 K.B. 559, in which the special provisions of the old Housing of the Working Classes Act, 1890, applied, the tie was held to be an asset which was to be paid for.

Since then the Acquisition of Land (Assessment of Compensation) Act, 1919, has made compulsory purchase something to be dreaded by the vendor when the acquiring authority is a government department or local government unit, but even this enactment expressly provides that while land is to be valued at market value, it is not intended to modify the principles of assessing compensation "for disturbance or any other matter not directly based on the value of land." But in a case to which the improvement or reconstruction provisions of the present Housing Acts apply, the two last cited authorities would have no force, for the much criticised s. 46 of the Housing Act, 1925, has made the measure of compensation the value of the site cleared of buildings, and so, as a licensee tenant found in *Northwood* v. *London County Council* [1926] 2 K.B. 411, disturbance of trade is not a factor, and presumably this applies to the benefit of any tie to which the lessors may be entitled.

A remarkable case of modern times concerning quite a different aspect of the law of compulsory purchase is *Piggott* v. *Middlesex County Council* [1909] 1 Ch. 134. It shows that accidents will happen even in the best regulated shire halls. The plaintiff was the reversioner of some premises at Willesden let on long lease. The premises consisted of a couple of ancient cottages and some land. The leaseholder was under a covenant to keep buildings in repair and to cultivate the land in a husbandlike manner. When the council, in the course of road-making activities, served notices to treat for part of the land on both landlord and tenant, the latter alone availed himself of his right to have his whole interest acquired. The boundary between what was and what was not wanted ran through the cottages, part of which should have been left standing, but the council demolished the cottages, and let what they did not want to a mason, who used it as a yard. Thereupon the landlord came down upon them with a forfeiture notice and a claim for damages for pulling down the cottages and failing to cultivate the land according to the principles of good husbandry, and it was held that the council, having exceeded their powers, were in exactly the same position as the tenant would have been in. Judgment was given for possession, £100 damages, mesne profits and costs.

Our County Court Letter.

THE VALIDITY OF HIRE-PURCHASE AGREEMENTS.

IN the recent case of *Chas. W. Brecknell, Ltd.* v. *Madelin*, at Lichfield County Court, the claim was for £4 5s. as damages for breach of contract, and for depreciation of automatic scales. The plaintiffs' case was that (1) the agreement provided for the payment of a first monthly rent of 14s. and subsequent rents of 15s. a month, but the defendant had exercised his option (under cl. 10) of returning the scales at any time; (2) although he had returned the scales at the end of one month, he was nevertheless liable for six months' rent (as agreed) by way of compensation and depreciation. The defendant's case was that (*a*) he had never used the scales, which had been kept under cover and were undamaged; (*b*) the agreement was folded up when he signed it, and he was unaware of the conditions upon which the scales were returnable. His Honour Judge Ruegg, K.C., observed that the defendant had been foolish to sign a document without reading it, but the amount claimed (on return of the goods) was ridiculous, and would render a breach of contract more advantageous to the plaintiffs than a performance. It was held that (1) the proviso (with regard to the payment of six months' rent on cancellation) was a penalty, and unenforceable; (2) the amount due for liquidated damages was 2s. 6d., for which amount judgment was accordingly given for the plaintiffs.

DANGER FROM WATER IN MINES.

THE question whether the amount of water in a mine justified a stopping of work was recently considered at Blaenavon County Court. The Blaenavon Co. Limited claimed damages (amounting in all to £45) from seventeen miners for breach of contract, in the following circumstances: (1) three shifts (comprising 130 men) had absented themselves from the afternoon and night shifts on Friday, the 13th April, and from the morning shift of Saturday, the 14th April; (2) this was in consequence of the refusal of the manager to recognise that there was an abnormal amount of water in the haulage road, although he had offered to have an inspection with anyone chosen by the men. The defence was that (*a*) there was water in No. 1 Tally Road of sufficient depth to make it dangerous or inconvenient to workmen—so much so that a plank had been placed on the floor, and (by reason of the low roof) it was necessary to hang on to a cable to get through; (*b*) No. 2 Tally Road was in a worse condition, and it was significant that a new road was being made, although it was called a new intake. His Honour Judge Thomas held that, although the underground working was wet in character, it was possible (with the exercise of care) for the men to get to their working places without wetting their feet. The real reason of the stoppage was not the danger of any obstruction, but the discomfiture or annoyance of the defendants at the refusal of the manager to carry out their request. As the defendants had unreasonably absented themselves from work, judgment was given for the plaintiff company, with costs.

THE RECOVERABILITY OF INTEREST.

IN *Fox* v. *Slater*, recently heard at Lichfield County Court, the claim was for £56 7s. 6d. as the balance of purchase money and interest in respect of a motor car, which had been supplied in 1925. The plaintiff's case was that (1) the car was sold on the understanding that interest would be paid on the amount outstanding after the first year, and this had been duly demanded; (2) the price of the car was £90, and the interest on the unpaid balance was £18, which was included in the amount claimed. The defendant's case was that (*a*) he had paid £20 on account, which left £70 as the original amount due, but he had never agreed to pay interest; (*b*) he had agreed to pay about £5 a month, but this was not to include 5 per cent. interest on any balance after the first year as alleged. His Honour Judge Ruegg, K.C., observed that attempts by traders to obtain interest were increasing in number, but interest (even if demanded) was not chargeable in the absence of a special contract. The case was therefore referred to the Registrar, to ascertain the amount due on the basis that no interest was allowable, there being no corroboration of the plaintiff's evidence of the special agreement to that effect.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

THE DEFINITION OF WORKMEN'S "EARNINGS."

IN the recent case of *Taylor* v. *Walsall, Wednesbury and District Society for the Blind*, at Walsall County Court, the applicant's case was that (1) Her deceased husband had sustained a cut thumb (in the course of his employment at the Society's workshops) and had died from blood poisoning; (2) his wages were £2 a week, but he also had a shop (for the sale of tobacco, newspapers, etc.) which yielded a profit of £1 2s. 6d. a week; (3) he also had a net income from house property of about £65 a year, and had invested £300 in savings certificates; (4) the sum of £3 2s. 6d. had been spent on the joint living of the deceased and the applicant, and (as she was wholly dependent on his earnings) the respondents' offer of £175 was inadequate. The respondents' case was that (*a*) The applicant had not been wholly dependent upon the deceased; (*b*) the profits from the shop were not "earnings," and (*c*) the compensation should be assessed on the basis that the deceased had earned £2 a week only. His Honour Judge Tebbs (in a reserved judgment) held that (1) The Workmen's Compensation Act, 1925, s. 8, included anything earned, and was not limited to wages paid by the respondent in any particular arbitration; (2) "earnings" could not be restricted to one employer, and—if a man were killed while working for one employer—the latter could not contend that the widow was not wholly dependent on his earnings, merely because the deceased earned other wages elsewhere; (3) ownership of property was no ground for contending that a widow and family were not wholly dependent, otherwise the fact of a workman having lived in his own house would defeat a claim based on total dependency. An award was therefore made of £300 and costs.

AMOUNT OF COMPENSATION FOR ARTHRITIS.

IN *Butcher* v. *Patent Shaft and Axle Tree Co. Ltd.*, recently heard at Walsall County Court, the facts were as follows: (1) The applicant was aged sixty, and had had an accident through slipping, while at work; (2) this had aggravated some arthritis, which had already existed in his elbows; (3) the applicant could not return to work as a striker (an occupation he had followed for forty years) owing to the constant jarring, which tended to cause arthritis; (3) his wages had been £3 a week, and a provisional agreement had been made for a settlement on payment of £112 and £26 5s. costs. His Honour Judge Tebbs declined to sanction the proposed settlement, observing that (in view of a permanently unemployed population of about three millions) disabled men had little chance of getting work. It was pointed out for the respondents that (*a*) in view of the applicant's age he could not have continued much longer at his work, even if uninsured; (*b*) if there had been no accident, and the applicant had become unemployed, he would have had small chance of obtaining work. Ultimately a memorandum of agreement for the payment of £150 and costs was recorded.

SILICOSIS AND PARTIAL INCAPACITY.

RESERVED judgment was recently given at Bargoed County Court in *Williams* v. *Powell Duffryn Co. Ltd.*, in which the facts were as follows: (1) the applicant had been employed as a collier from 1924 until the 20th May, 1933, when the Silicosis Medical Board refused a certificate of disablement; (2) the applicant was nevertheless suspended on the 27th May, 1933, but a further application for a certificate was made on the 23rd September, 1933, as a result of which a certificate of partial disablement was granted on the 30th October, 1933, suspending the applicant from employment in the industry as from the 27th May. His Honour Judge Thomas accordingly made an award on the basis of such partial incapacity.

Land and Estate Topics.

By J. A. MORAN.

THERE are signs, all round, of the early close of the holiday season, and the near approach of what promises to be a busy period. Large estates continue to come on the market, and the number of auctions definitely fixed for September and October is above the average. There is no doubt that the persistence with which large private deals continue to be recorded has had a lot to do with this. Another promising feature is the success that appears to have attended efforts by speculators to find a purchaser for an estate that was bought for the purposes of resale.

Within the next quarter of a century many thousands of working-class freehold houses will be passing into the hands of hereditary successors, who, in all probability, will be either

unwilling, or unable, to spend the comparatively large sums of money required to keep such flimsy structures in safe and hygienic condition. But the land upon which their property stands will be the indisputable possession of their heirs, who, presumably, will be able to do what they like with the derelict houses. If they let them to people less fortunately situated than themselves, the ornate villa residences that sprung up, almost in a night, all over the country within recent years, will present another slum problem to a near future generation.

It is rather significant that a well-known auctioneer in a London district is exhibiting a prominent poster in railway stations and elsewhere. At top, in very large red letters, is the single word "CRACKS!" At the time of my inspection there were many others who appeared to have a similar interest in what appeared to be a novelty. The public were advised to watch their new houses for structural settlements; and if any were found, the right thing to do was to ring up or get into immediate touch with the advertiser. I do not remember if he guaranteed a complete cure; anyway he was prepared to do his best under the circumstances.

Lovers of old London walk by, with wistful looks at, historic Clifford's Inn, and lament the passing of another of the few surviving vestiges of an older London. Soon a block of modern flats will replace these sixteenth century chambers. From a practical, and mere housing point of view, such a transformation is eminently desirable, but the Inn was a picturesque oasis of quiet, separated from the roar of Fleet Street only by a few yards, but so secluded that modern traffic noises were completely shut out.

Near Glasgow there is a large estate for sale; and the owner, evidently, thinks he knows the most tempting bait to attract the attention of the Scotsman. In front, on a huge hoarding, there are three prominent and arresting lines at the head of the notice. They are:—

"For Sale: this estate
2s. 6d. per square yard.
CHEAPER THAN LINOLEUM."

A house, with a squatter's title was offered for sale in London a week ago and there were no bidders. Surely here was a case in which the sporting instinct of the Briton might have asserted itself. I know of similar houses that were sold for the proverbial song, and afterwards rewarded the purchaser with a prize return on his capital.

It is evident that more houses are wanted, if only to judge by the number of interesting estates that are being arranged for early auction. The property already fixed for presentation to the highest bidder is at Southwick, on the Upper Main Road from Shoreham to Brighton and contains about 74 acres with extensive main road frontages. There is also to be included in the sale a chalk pit with excellent commercial possibilities. The auction will be held by Messrs. Harry James Burt & Son, of Steyning, on the 20th instant.

I wish someone would buy Glencoe. The way in which this queen of the deer forests has been trotted out for years to fill the blank spaces in the property notes that appear regularly in the daily papers, gets on one's nerves. It was one of these authorities who was responsible for the following a few days ago: "As rentals have to be proportioned to the cost of sites and buildings, the tenancies of flats in the best positions in Belgravia and Mayfair must always be restricted to those who can pay large sums for house room." This will be bad news for Battersea and West Ham.

Reviews.

The Development of International Law by the Permanent Court of International Justice. By H. LAUTERPACHT, LL.D., Dr. Jur., Dr. Sc. Pol. 1934. Demy 8vo. pp. ix and (with Index) 111. London: Longmans, Green & Co. 6s. 6d. net.

Professor Lauterpacht considers that the Permanent Court, although some of its pronouncements have contributed to the solution of acute controversies and prevented others from becoming dangerous sources of friction, yet it would be an exaggeration to say that the court has proved to be a bulwark of peace. Debarred from acting directly as a supreme agency of peace, it has consistently fulfilled a secondary function, the developing of international law.

It is the method and extent of this development which forms the subject of Professor Lauterpacht's able and illuminating book.

The court cannot be said to have adopted the English doctrine of precedent in all its rigidity, but it does largely follow its own decisions in a way which is creating, developing and clarifying "an imposing body of rules of international law of various degrees of crystallisation."

The court is restrained in its work, but the "caution is largely a matter of form. It looms large, and rightly so, in the pronouncements on the pleas to the jurisdiction, but has not proved an obstacle in the way of developing its jurisdiction." The court does a good deal of "judicial legislation."

One praiseworthy feature of the court's work "is the determination to secure a full degree of effectiveness of international law." A treaty must be interpreted to be effective rather than ineffective. The handling of the Minorities treaty provisions is an example. A measure forbidden by a treaty is not allowed to become lawful merely because the State brings about by it an inequality in fact disguised by a nominal equal application to its own subjects. A measure which hits thousands of a minority while affecting units of the majority is not non-discriminatory, though its form be general.

The professor's study of the court's work reveals the court "not as a body of men losing themselves in the maze of juridical niceties, but as applying the law in a constructive spirit with their eyes on the practical necessities of international life."

The praise which the author gives to the court can be applied also to his work. He discusses the law in a constructive way with an understanding of its spirit, as a living growth, and not as a bag of tricks.

The English Police. By C. H. GLOVER. 1934. Crown 8vo. pp. 143. London: The Police Chronicle. 5s. net.

From their early Anglo-Saxon beginnings, through their evolution under various names and in different formations all over the country, up to their latest development and organization, the story of the civil guardians of law and order is told in simple and engaging style. The author, however, evinces a wide knowledge and a broad mind. He shows how the police force has assumed the threefold task of preventing breaches of the law, detecting them when they occur, and bringing those responsible for their commission to justice. It is for statesmen and administrators to tackle the causes which lead to crime, and in an illuminating passage we read: "The first act is to remove the cause, since no amount of additional increase in the personnel (or improvement in the efficiency) of the Police will stop it." The chapter on the Women Police is excellent.

Books Received.

The Juridical Review. Vol. XLVI. No. 3. September, 1934. Edinburgh: W. Green & Son, Ltd. 5s. net.

The Indian Contract Act and Sale of Goods Act. By T. R. DESAI, B.A., LL.B., Vakil, High Court, Bombay, and S. T. DESAI, B.A., LL.B., of Lincoln's Inn, Barrister-at-Law. Thirteenth Edition, 1934. Bombay: R. K. Desai, B.A., LL.B., Girgaon. Price 6s.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Liability for Defective Building.

Q. 3032. Speculative builders have taken leases of land and have erected and sold houses thereon. A client arranges that the builders shall build him a house similar to those already erected on a plot of land which is shown to him. There is no written agreement; the house is completed in due course and paid for. Subsequently serious defects in construction develop which can be proved to be due to bad building. Has the client a remedy in law, and, if so, what is the measure of damages?

A. The contract was not merely for the sale of a house, but was (1) to build a house according to specification; (2) to sell the house when finished. The maxim "caveat emptor" therefore does not apply, and there was an implied warranty that the house shall be built in a workmanlike manner. See *Miller* v. *Cannon Hill Estates, Ltd.* [1931] 2 K.B. 113, in which there was a written contract. Nevertheless, the judgments of the Divisional Court show that the questioner's client has a remedy in law in the present case. The measure of damages will be the cost of the necessary repairs—it being assumed that the house has not been built long enough for a portion of the repairs to be attributable to fair wear and tear. It should be ascertained whether, in conversations prior to the agreement, any representations were made (with regard to the quality of the materials) which might constitute an express warranty or collateral agreement.

Bankruptcy—Claim by Trustee to Set Off Statute-Barred Debt from Creditor.

Q. 3033. In September, 1925, A advanced B a sum of money on I.O.U. In January, 1921, B loaned a larger sum to A on promissory note. A was adjudged a bankrupt in October, 1933, and his trustee in bankruptcy claims to set off the loan by A against the loan by B on the ground that the debt contracted by B was not extinguished by the Statute of Limitations and can still be set off. Will you please advise whether the contention of the trustee can be upheld.

A. There appears to be no direct authority on this point. The trustee is probably making his claim on the principle that in bankruptcy a trustee has to observe equitable rules (*Mathieson's Trustee* v. *Burrup* [1927] 1 Ch. 562), and on the principle that in the winding up of a deceased's estate a beneficiary can be asked to set off a statute-barred debt against a share of the estate. The answer to the question, of course, depends on the mutual dealings section. It is clear that a statute-barred debt cannot be *proved* in bankruptcy. With some diffidence the opinion is given that the decision of Cave, J., in *Re Hepburn, ex parte Smith* (1885), 14 Q.B.D. 394, is an authority for the proposition that a trustee cannot set off a statute-barred debt. It is assumed the promissory note is not statute barred.

Tenancy Agreement under Hand—Costs of.

Q. 3034. We are acting for a client who has entered into an agreement for tenancy for three years at a rent of £85 per annum of business premises situate in London. The landlord's solicitors practise in Derby and are of the opinion that the tenant is liable to pay the landlord's costs of the agreement. They are charging scale fee as if the agreement was a lease, and quote the case of *Re Negus* in support of their claim, and also say that it is the local custom in Derby for the tenant to pay the landlord's costs. We shall be glad if you will let us know if their view is correct or if the general custom which we believe to be that in the case of a letting for three years or under each party pays its own costs would apply. We enclose a stamped addressed envelope, and shall be obliged if you will let us have a reply as soon as possible.

A. For the purposes of this reply it is assumed that the agreement is under hand only. The Council of The Law Society has expressed the opinion that there is no custom binding the tenant to pay the landlord's costs of an agreement (Opinion of 12th November, 1891, para. 943, at p. 251 of "Law, Practice and Usage, etc." 1923 ed.; see also *Leach* v. *Bevan*, a City of London Court case (*The Times*, 5th February, 1904, p. 5), noted on p. 168 of the above). Each party will bear his own costs in accordance with Sched. I, Pt. 2, of the General Order under the Solicitors' Remuneration Act, 1881, as amended by the Order of 3rd October, 1932.

Estate Agent's Commission.

Q. 3035. On the 27th February, 1931, A, a firm of estate agents in the West End of London, applied to B, the owners of certain property in the West End, for particulars of space approximating 5,000 feet on the back portion of the mezzanine floor. A asked whether in the event of business resulting B would be prepared to pay them the usual commission. B replied by letter of even date that they would pay 7½ per cent. on one year's inclusive rental in the event of business resulting from the introduction. On the 4th March, 1931, A wrote with the name of their applicant C. B were the owners of the adjoining premises of whom C was an important tenant and very well known to B. No letter, however, appears to have been written to A refusing to accept an introduction to one of their tenants or declining to pay commission on the introduction of C. In December, 1932, C called upon the managing director of B, accompanied by another gentleman D. Long and protracted negotiations then took place, and ultimately the entire mezzanine floor with the exception of one room (not the back portion only) was let to D, and possession of the premises was given to him on the 1st January, 1933. The letting involved long negotiations with the tenants of part of the floor, who were in occupation, and who had to be re-housed in another part of the building. It also involved a licence being obtained from the superior landlords for the user of the premises as a club and for extensive alterations to be carried out. Incidentally the superior landlords refused to grant their consent to the user except upon payment of an additional rent of £500 per annum, which ultimately D agreed to pay. It was understood that C was to manage the club, and in fact when the club was established on the premises it was known by C's name. No communication was received by B from A either verbally or in writing from the 4th March, 1931, until the 4th January, 1934, when a letter was written to B by A asking for particulars of the letting in order that they could render their account for commission. C states that he has no recollection that A showed him over the floor, but they may have done so. He, at that time, was looking for premises, and they showed him a number of different properties, and it may well have been that they showed him this particular space, but in any event it was already well known to him as being practically next door to

his offices. On the other hand, A say that they were in touch with C down to April, 1932.

A. The opinion is given that the claim for commission would fail (*a*) by reason of the long period which elapsed between the introduction and the letting; (*b*) on the technical point that the actual tenant, who ultimately took the premises, was not C, but D. The case resembles *Bramham and Gale* v. *Lupton* (noted in our issue of the 17th June, 1933, 77 Sol. J. 417), in which the estate agents failed in the county court. Their appeal was allowed, however, on the 7th February, 1934. The present case is distinguishable, on the ground that C was already known to B as one of their tenants, whereas in *Bramham and Gale* v. *Lupton, supra,* the purchaser was a stranger, first introduced by the estate agents. There is a greater similarity between the present case and *E. H. Goddard and Son* v. *Webster* (noted in our issue of the 21st October, 1933, 77 Sol. J. 745). It was there held that, although the estate agents had originally introduced the purchaser, they were not the ultimate cause of the sale. The evidence in the present case is that B's offer to pay commission lapsed after April, 1932, when A's authority to act as agents expired. The claim for commission in January, 1934, cannot therefore be sustained, even though it is alleged to have been earned in December, 1932.

Doctor's Restrictive Covenant.

Q. 3036. A doctor sells his practice and para. 10 of the agreement states as follows: "The vendor hereby agrees with the purchaser and his successors not (except while acting as assistant to the purchaser during the period of introduction hereinbefore provided for or when called in as a consultant by some other medical practitioner) after the said 30th day of September 1933 exercise or carry on or be concerned or interested in exercising or carrying on upon his own account or in partnership together with or as assistant to or for any other person or firm the practice profession or business of a physician surgeon accoucheur or apothecary at any place within 10 miles of '———— House' for a period of 10 years. And if the Vendor shall so practice or assist any other person to practice within the limits aforesaid or in any way to violate any of these provisions he shall pay to the Purchaser the sum of £ for every month or part of a month during which he shall violate such provisions as ascertained and liquidated damages and not by way of penalty." The purchaser has within a radius of ten miles acted as locum tenens to another doctor. The question has arisen as to whether acting as locum tenens comes within the clause referred to. Can the doctor carry on as locum tenens and/or as an assistant? Does the word "assistant" cover "locum tenens"?

A. In answer to the two questions submitted:—

(1) The doctor cannot carry on as locum tenens and/or as an assistant, assuming the covenant is valid.

(2) The word "assistant" covers "locum tenens," as no distinction can be drawn from the fact that "assistant" usually implies a permanent position, whereas that of "locum tenens" is temporary.

A further question arises, however, as to whether the covenant is wider than is reasonably necessary for the protection of the vendor. Ten years seems unduly long, and ten miles an unreasonable radius—unless the practice is in a rural neighbourhood. If it is in a town, the opinion is given that the restraint is too wide, and that the covenant is therefore void.

Building Society Selling Mortgaged Property—Charge of Redemption Fees.

Q. 3037. (*a*) Is not a rule under which a building society, after exercising its statutory power of sale, claims to deduct from the proceeds of sale redemption fees (presumably a payment in lieu of notice by a mortgagor to pay off) void: (1) as being a collateral advantage in favour of a mortgagee which offends against equity, and/or (2) as being a provision or stipulation having the effect of clogging or fettering the equity of redemption. (See *Bovill* v. *Endle* [1896] 1 Ch. 648; *Smith* v. *Smith* [1891] 3 Ch., at p. 552; *Edmondson* v. *Copland* [1911] 2 Ch. at p. 307; *Biggs* v. *Hoddinott* [1898] 2 Ch. 307; *Noakes* v. *Rice* [1902] A.C., at pp. 24 & 32). (*b*) Is such a society in such circumstances entitled to ask the person to whom under s. 105 of the L.P.A., 1925, the residue of the net proceeds of sale should be paid, to approve its accounts as a condition precedent to payment? If the reply is in the negative can such person be charged with the consequent correspondence relating to (amongst other matters) the point raised in (*a*) above, and generally of an unsuccessful attempt to settle accounts. An indication of the proper proceedings by the person so entitled to such residue to enforce his rights (after payment by mortgagees of amount admitted by them) under either or both of these questions would oblige.

A. (*a*) Apart from powers actually contained in the building society mortgage or in the rules, which may be incorporated by reference, the mortgagor has no right to redeem otherwise than by payment of the instalments of principal and interest. It is settled law that a mutual provision that a mortgage is not to be redeemable or called in for a period of years is not a clog on the equity (*Davis* v. *Symons* (1934), 78 Sol. J. 297). A mortgagee under a common form mortgage who calls in the money is not entitled to interest in lieu of notice, but it is considered that in a building society mortgage or any mortgage where there is a mutual clause for non-redemption and non-calling in, a provision might lawfully be inserted for giving the right to a mortgagee, who exercises a power of sale in default, the right to a sum equivalent to what an ordinary mortgagor has to pay to redeem without notice, although there is no direct authority to this effect. The claim, however, must be justified by an express provision in the mortgage deed or in some incorporated rule. (*b*) A mortgagee makes out his accounts at his own risk and is not entitled to ask the mortgagor or subsequent incumbrancer to accept them. If, however, the mortgagor or subsequent incumbrancer by wrongfully objecting to items, or otherwise necessitates legal correspondence, it is considered the cost of such correspondence may be treated as the first mortgagee's cost.

Obituary.

Major J. E. FOX.

Alderman Major John Edward Fox, T.D., J.P., Barrister-at-Law, of Harcourt-buildings, Temple, and of Croydon, died on Monday, 3rd September, at the age of eighty-two. He was called to the Bar by the Inner Temple in 1890.

Mr. L. H. OAKSHOTT.

Mr. Leigh Hunter Oakshott, solicitor, partner in the firm of Messrs. Duncan, Oakshott, Chevalier & Morris-Jones, of Liverpool, died at Rock Ferry on Tuesday, 4th September. Mr. Oakshott was admitted a solicitor in 1884.

Mr. C. H. W. OSBORN.

Mr. Charles Henry William Osborn, solicitor, partner in the firm of Messrs. Turner, Osborn & Chatterton, of Devonshire-square, Bishopsgate, E.C., and of Warlingham, Surrey, died on Thursday, 30th August. Mr. Osborn was admitted a solicitor in 1895.

Mr. E. S. ROCHE.

Mr. Edward Stevenson Roche, solicitor, partner in the firm of Messrs. Cooper, Bake, Fettes, Roche & Wade, of Portman-street, W., died on Tuesday, 4th September. Mr. Roche was admitted a solicitor in 1890.

To-day and Yesterday.

LEGAL CALENDAR.

3 SEPTEMBER.—The great Sir Edward Coke spent his declining years at Stoke Poges. He knew his end was near, for in 1631, when a friend sent him "two or three doctors" he told them that he "had never taken physic since he was born and would not now begin; and that he had upon him a disease which all the drugges of Asia, the gold of Africa, nor all the doctors in Europe could cure—old age. He therefore both thanked them and his friend that sent them and dismissed them nobly with a reward of twenty pieces to each man." He lived for three years more without medical assistance, dying on the 3rd September, 1634, at the age of eighty-two.

4 SEPTEMBER.—If he had lived, Lord Gifford would probably have succeeded Lord Eldon as Chancellor. He had been raised to the peerage in order that he might deputise for him as Speaker of the House of Lords. At the same time he successively filled the offices of Chief Justice of the Common Pleas and Master of the Rolls. So much labour wore him out. In the Long Vacation of 1826, he went to rest at his house on the Marine Parade at Dover. There he was attacked by a disorder of the liver upon which cholera supervened. He died on the 4th September.

5 SEPTEMBER.—Playgoers who saw "Richard of Bordeaux" will remember that Michael de la Pole was the King's Chancellor at the time of his quarrel with Parliament. The paltry nature of the charges brought against him show that the only real complaint was his support of an unpopular policy. He was condemned to be hanged, but, disguised in shabby clothes, he escaped across the Channel and reached Calais Castle in the guise of a Flemish poulterer. The Governor sent him back to England, but he escaped again by way of the North Sea and the Dutch coast. For over a year he lived in exile, dying in Paris on the 5th September, 1389.

6 SEPTEMBER.—On the 6th September, 1834, Thomas Goodwin, a letter-carrier, was capitally indicted at the Old Bailey for stealing a General-post letter containing three £500 bank notes. Two other men were also indicted for receiving it. The theft had taken place in the sorting office. The evidence disclosed some smart detective work on the part of a Bow-street officer who tracked the receivers through a succession of public-houses and gin shops till the time was ripe to put his hand into the pocket of one of his suspects and draw out a £500 note. The prisoners were all found guilty.

7 SEPTEMBER.—Mr. Justice Powell died of the stone at Exeter on the 7th September, 1696. He was buried at Broadway, near Llangharne, in Carmarthenshire.

8 SEPTEMBER.—Sir Robert Brerewood died on the 8th September, 1654, and was buried in St. Mary's Church at Chester. He had been raised to the Bench in January, 1644, while the King was at Oxford, and his short judicial career ran its course during the turmoils of the Civil War. He never sat in Westminster Hall, and after the execution of the unhappy Charles, he retired into private life.

9 SEPTEMBER.—On the 9th September, 1721, the will of William Hall, Serjeant-at-law, was proved in the Prerogative Court of Canterbury. It said: "I give to my cousin Hampny Hall, £300, and to that vile wretch Samuel Hall, his nephew (who I admitted of the Temple many years since, but he sold his gown and in seven years I could never get him to church but once, and twice he assaulted me . . .) the sum of ten shillings to be paid to him every Monday upon request thereof . . . though starving is a death too moderate for that wicked sinful life he has lived, and I hope and humbly pray to my God to forgive him."

THE WEEK'S PERSONALITY.

In the closing years of the seventeenth century, three Powells held judicial office and made confusion for legal historians. The first of them, Sir John Powell, was appointed to the Common Pleas in 1686 and transferred to the King's Bench in the following year. He did not stay there for long, since having independently taken a view contrary to the contention of the Crown in the trial of the Seven Bishops, he was shortly afterwards dismissed and replaced by Sir Thomas Powell, a Baron of the Exchequer. Immediately after the Whig Revolution he was given a place in the Court of Common Pleas. Here he stayed till his death in 1696. The previous year, another colleague of the same name, a Sir John Powell, who had spent four years in the Court of Exchequer, joined him in the Common Pleas. This last Powell survived till 1713, and, shortly after the accession of Anne, was appointed to the Queen's Bench. The three were not in any way related, although two came from Wales and one from the West of England. The judge who suffered for his boldness in the trial of the Seven Bishops seems to have been a particularly sound lawyer. While he sat in the King's Bench he appears to have been given the task of supplying the legal deficiencies of Sir Robert Wright, the handsome, amusing and agreeable, but desperately ignorant, Chief Justice.

VACATION ACTIVITY.

If in the customary quiet of the Long Vacation the Temple ghosts glide by daylight about the empty courts and untenanted chambers, those who usually make Essex-court their haunt must have been chased away by the fever of re-conditioning which has scaffolded the old brick walls and turned the whole space into the semblance of a builder's yard. The activity can hardly have been greater when in 1656 Numbers 1 and 2 ("a very large, high, spacious brick building") were replacing the block where sixteen years earlier the famous John Evelyn and his brother had "a very handsome apartment just over against the Hall Court but four payre of stayres high which gave us the advantage of the fairer prospect but did not much contribute to the love of that impolished study to which (I suppose) my father had designed me when he paid £145 to purchase our present lives and assignments afterwards."

ESSEX COURT.

The rest of Essex-court was built in 1677 on ground bought from the notorious Dr. Barbon, a speculative builder whose workmen once fought a pitched battle with the members of Gray's Inn over a site near their walls; the lawyers carrying the day. The court stands on the place where flourished the gardens of Essex House, the great palace of Robert Dèvereaux, the Earl of Essex who has left his name written so large over the neighbourhood. The last architectural upheaval in this corner of the Temple was in 1883 when the building in the north-east corner was put up, though a recent fire at No. 4, had it spread, might well have spelt an entire modern reconstruction for the rest of the block. Meanwhile, the present activity must have chased from their repose the shades of Lord Chief Justice Jervis and Lord Chief Justice Bovill, who used to have their chambers at No. 3, and disturbed the ghost of Lord Penzance, sharing the quiet of No. 2 with Handsome Jack Karslake, the brilliant Attorney-General, whose career blindness cut short.

SURVEY OF TOWN PLANNING.

Major Harry Barnes, F.R.I.B.A., Chairman of the Town Planning Committee of the London County Council, is to visit Paris, Berlin, Vienna, and Rome during September (says *The Times*) to view the latest town planning operations in these cities. He will be accompanied by his son, Mr. T. S. Barnes, A.R.I.B.A., Secretary of the Town Planning Committee of the Royal Institute of British Architects.

Notes of Cases.

Court of Appeal.

Attorney-General *v.* Eastbourne Corporation.

Lord Hanworth, M.R., Romer and Maugham, L.JJ.

16th and 17th July, 1934.

Local Government — Corporation — Entertainments — Bandstand—Whether "Building"—Eastbourne Corporation Act, 1926 (16 & 17 Geo. 5, c. xcv), s. 17.

Appeal from a decision of Luxmoore, J. (78 Sol. J. 192).

It was alleged that in contravention of the Eastbourne Corporation Act, 1926, the corporation had provided variety entertainments at the Pavilion Cinema, the Winter Garden and the Redoubt Bandstand.

Lord Hanworth, M.R., in giving judgment said, that Luxmoore, J., was right in holding that the entertainments at the cinema and the winter garden were not provided by the corporation, and also in his decision with regard to the dances. A dance was none the less a dance because a cabaret performance was given in the course of it, and refreshments were provided; such things were ancillary to it. Luxmoore, J., was wrong, however, in holding that the bandstand, where variety entertainments were provided, was not a "building." This structure was undoubtedly a building and was erected by the corporation in pursuance of its duty under s. 17 of the Act. Save on this last point, the appeal must be dismissed.

Romer and Maugham, L.JJ., agreed.

Counsel: *Henn Collins*, K.C., and *V. Holmes*; *Spens*, K.C., and *C. E. Harman*.

Solicitors: *Steadman, Van Praagh & Gaylor*; *Sharpe, Pritchard & Co.*, agents for *H. West Fovargue*, Town Clerk, Eastbourne.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

McCormick *v.* National Motor and Accident Insurance Union Ltd.

Scrutton, Greer and Slesser, L.JJ. 18th and 19th July, 1934.

Insurance—Motor-vehicle—Concealment in Proposal Form—Accident—Action against Insured Driver—Mis-statements coming to Insurance Company's knowledge—Repudiation of Liability—Third Parties (Rights against Insurers) Act, 1930 (20 & 21 Geo. 5, c. 25)—Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 36 (5).

Appeal from a decision of Swift, J.

On the 25th July, 1932, one Dadswell signed an insurance proposal form under the name of Dickson. In it he stated that he had never been convicted of any offence in connection with a motor vehicle, whereas in fact, in 1925, he had been convicted of driving a motor cycle in a dangerous manner. It was provided that the proposal should be the basis of the contract between Dadswell and the defendant company. On the 4th August a policy was issued to Dadswell, and also a certificate under the Road Traffic Act, 1930, s. 36 (5), that he was insured. On the 6th August, his motor cycle collided with the plaintiff's motor cycle, the plaintiff being injured and his pillion passenger killed. The plaintiff and the widow of the pillion passenger brought an action against Dadswell. A few days before the hearing the company had information of Dadswell's real name, and during his cross-examination on the 24th May, 1933, the second day of the trial, his previous conviction was revealed. Damages were awarded against Dadswell, who subsequently went bankrupt. On the 29th May the company repudiated liability under the policy. This action was brought to recover from them, under the Third Parties (Rights Against Insurers) Act, 1930, the amount of the judgment and costs awarded against Dadswell. Swift, J., gave judgment against the defendant company.

Scrutton, L.J., allowing the appeal, said that the duty on the company to take action did not arise till it knew all the facts and had had a reasonable time to decide. In this case it did not arise till the 29th May. It was said that the company, having issued a certificate of insurance under the Road Traffic Act, 1930, could not deny liability even after it found that the policy was voidable for concealment. There were no clear words in the statute pointing to this conclusion.

Greer and Slesser, L.JJ., agreed.

Counsel: *Schiller*, K.C., *Gerrard* and *Cautley*; *Jalland* and *G. Horrocks*.

Solicitors: *William Charles Crocker*, agent for *F. S. Rhodes and Bethel Jones*, of Manchester; *Robinson & Bradley*, agents for *W. H. Goulding*, of Bolton.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Rex *v.* Minister of Health: *Ex parte* Purfleet Urban District Council.

Scrutton, Greer and Slesser, L.JJ.

23rd July, 1934.

Local Government—Proposals of County Council—Representations of Local Authorities—Powers of Minister—Local Government Act, 1929 (19 & 20 Geo. 5, c. 17), ss. 46 and 47.

Appeal from the King's Bench Division.

In March, 1931, the Essex County Council, by virtue of s. 46 of the Local Government Act, 1929, called a conference of representatives of councils within the county with a view to considering whether it was desirable to effect any of the changes enumerated in the section. Subsequently, it completed its review, sending to the Minister of Health on the 24th June, 1932, a report dealing with the proposals for changes which it considered desirable. Objections having been made by the local authorities affected, the Minister appointed an inspector to hold a local inquiry in November, 1932. On the 10th May, 1933, the Minister communicated his decisions to the county council by letter, sending copies to the other local authorities. The decisions were materially different from the county council's proposals, and the letter invited it to submit supplementary proposals. These, submitted in October, 1933, produced an entirely different scheme. A fresh local inquiry was held in November, 1933. In December, 1933, the Minister substantially approved the supplementary proposals, the draft order being made in January, 1934. The Divisional Court held that the Minister had jurisdiction to invite the county council to consider the original proposals further.

Scrutton, L.J., dismissing the appeal, said that the question depended on ss. 46 and 47 of the Act. Under s. 46, when the Minister had considered the proposals of the county council and any representations with respect to them by the local authorities, he might make an order giving effect to the proposals, with or without modifications, or refuse to make an order. The question was how much liberty did this give him? Could he, having the proposals before him and not having come to a final decision, make further inquiry of the interested parties? He had abundant power to do so.

Greer and Slesser, L.JJ., agreed.

Counsel: *Montgomery*, K.C., and *John Hodson*; *The Solicitor-General* (Sir Donald Somervell, K.C.) and *Bowstead*; *W. E. Jones*, K.C., and *Geoffrey Hutchinson*.

Solicitors: *T. A. Capron & Co.*; *Solicitor to the Ministry of Health*; *Sharpe, Pritchard & Co.*, agents for *E. S. Holcroft*, Clerk to the Essex County Council, Chelmsford.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Mr. Joseph Proctor Russell, solicitor, of Worksop and Sheffield, left estate of the gross value of £21,412, with net personalty £19,897. He left: £100 to Sheffield Royal Infirmary; £100 to Worksop Victoria Hospital; £50 to the Children's Hospital, Sheffield.

High Court—Chancery Division.

In re **Chesters : Whittingham** *v.* **Chesters.**

Bennett, J. 10th, 11th and 25th July, 1934.

Mortgage—Will—Tenant for Life in Remainder—Payment off—Charge Kept Alive.

A testator who had mortgaged certain freehold property died on the 11th July, 1927. He devised his freehold premises on trust for his wife for life with remainder to the use of his son for life with remainders over. In December, 1927, the son being then tenant for life in remainder paid £500 in payment off of the mortgage. The widow having died in 1931 and the son in 1933 the question arose whether the testator's executors should pay the son's legal personal representatives £500 out of the proceeds of sale of the premises.

Bennett, J., in giving judgment, said that there was a presumption in favour of a tenant in tail in remainder who paid off a charge that he intended to keep it alive (*Wigsell* v. *Wigsell*, 2 Sim. & St. 364). This would apply *a fortiori* to the case of a tenant for life in remainder and there could be no distinction between a tenant for life in possession and a tenant for life in remainder. In this case the evidence did not displace the presumption. The sum must be paid to the son's legal personal representatives.

Counsel: *Preston*, K.C., and *Richard Wilberforce*; *Charles Romer*; *Roxburgh*, K.C., and *Gamon*; *Hubert Rose*; *Andrewes-Uthwatt* (for the *Attorney-General*).

Solicitors: *Nash, Field & Co.*, agents for *J. P Whittingham*, of Nantwich; *Cunliffe, Blake & Mossman*; *Gibson & Weldon*, agents for *Whiteley & Bevan*, of Nantwich; *Robinson and Bradley*; *Treasury Solicitor*.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

Rex *v.* **Joseph Waldman.**

Lord Hewart, C.J., Avory and MacKinnon, JJ. 16th July, 1934.

Criminal Law—Character in Issue—Cross-examination as to Previous Acquittal.

This was the appeal against conviction of Joseph Waldman, who was convicted at the Central Criminal Court on the 1st June, 1934, on a charge of receiving goods worth £350 knowing them to have been stolen, and was sentenced to twelve months' imprisonment. At the trial the appellant in his evidence said that he had bought the goods on sale or return from a person whom he believed to be an honest business man, though he had since discovered that the person was a receiver of stolen goods. A witness called for the defence said that the appellant, whom he had known for twelve years, bore a good reputation. Later, at the request of the prosecution, the appellant was recalled, and admitted that he had been convicted of receiving stolen goods in 1920 and bound over, and that two years later, at the Middlesex Sessions, he had again been charged with receiving stolen property, but had been acquitted.

Avory, J., giving the judgment of the court, said that the appeal was on the ground that the judge misdirected himself in law in that he allowed counsel for the prosecution to cross-examine as to a previous charge of receiving stolen goods, being a charge upon which the appellant was acquitted. The first question was whether that question by the prosecution was or was not admissible. It was to be observed that there was a not unimportant distinction between this case and the case of *Maxwell* v. *Director of Public Prosecutions* [1934] 24 Cr. App. R. In *Maxwell*, *supra*, there was no suggestion that the appellant had ever been convicted at all, and whether the House of Lords would have decided the question in the same way as they did if they had had to deal with a case where a man had been previously convicted and had also been asked whether he had been previously acquitted might be open to doubt. Even assuming that this was a case in which the questions as to the previous acquittal ought not to have been put, the court was of the opinion that the provisions of the proviso to s. 4 of the Criminal Appeal Act, 1907, should be applied in the present case, and the appeal should be dismissed.

Counsel: *St. John Hutchinson*, for the appellant; *Christmas Humphreys*, for the Crown.

Solicitors: *Pengelly & Co.*; *Wontner & Sons*.

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

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Rules and Orders.

The Rent Restrictions Regulations, 1934,* dated July 26, 1934, made by the Minister of Health under section 14 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (23 & 24 Geo. 5, c. 32) for prescribing certain forms of notices and application for registration under that Act.

77529.

The Minister of Health in exercise of the powers conferred upon him by section 14 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 and of all other powers enabling him in that behalf hereby makes the following regulations :—

1. These regulations may be cited as the Rent Restrictions Regulations, 1934, and shall come into operation on the date hereof.

2. The form contained in Part I of the Schedule to these Regulations shall be substituted for the form contained in the First Schedule of the Act of 1920.(†)

3. As from the 30th day of September, 1933 every rent book or similar document used by or on behalf of any landlord in relation to any dwelling house to which the principal Acts

* These regulations supersede the provisional regulations which were made on the 19th July, 1933.

† 10–1 G. 5. c. 17.

apply shall contain a notice, in the form set out in Part II of the schedule to these regulations, or in a form substantially to the like effect, of all the matters referred to in the said form.

4. Application for the registration of any dwelling house under the provisions of Section 2 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 shall be made in the form set out in Part III of the Schedule to these Regulations or in a form substantially to the like effect.

SCHEDULE.

PART I.

Rent and Mortgage Interest Restrictions Acts.
Notice of Increase of Rent.

Date.....

To , tenant of

Take notice that the rent of the above premises will as from be per [and as from be per].

Details showing how this rent is made up are given below.

[See Note 1.]

(Signed).....
(Address).....

	£ s. d.	
(*a*) Standard Rent of the premises		per
(*b*) per cent. of £ s. d. (the net rent of the premises) .. [See Note 2.]		,, ,,
(*c*) per cent. of £ s. d. spent on improvements and structural alterations not including decorations and repairs to the premises .. .. .. [See Note 3.]		,, ,,
(*d*) Increase of rates payable by the landlord in respect of the premises from £ s. d. in [1914] to £ s. d. for the current rating period .. .. [See Note 3.]		,, ,,
(*e*) per cent. of £ s. d. being the net rent of the sub-tenancies (if any) in the house .. .. [See Note 5.]		,, ,,
Total rent ..		,, ,,

Note 1.

Any increase of rent over the standard rent under heads (*b*) (*c*) and (*d*) can only be charged after notice has been given by the landlord in the statutory form of notice or a form substantially to the same effect. At least four weeks' notice must be given in the case of an increase under heads (*b*) and (*c*), but only one week's notice is necessary in the case of an increase under head (*d*). Where a valid notice of increase has been served on any tenant (whether in the form prescribed by the Act of 1920, or, if served after the 19th July, 1933, in this form), the increase may be continued without further notice to any subsequent tenant.

Note 2.

The maximum permitted increase under head (*b*) is 40 per cent. of the net rent. If the tenant considers that the premises are not in a reasonable state of repair he can apply to the sanitary authority for a certificate to that effect. (A fee of one shilling is chargeable on an application for a certificate but if the certificate is granted the shilling can be deducted from the rent). Where a certificate is granted, and the tenant serves a copy of it on the landlord, the tenant may withhold that part of the increase in the rent set out under (*b*) above until the landlord has executed the necessary repairs to the satisfaction of the sanitary authority.

If, however, the landlord can prove to the County Court that the condition of the house is due to the tenant's neglect or default or breach of agreement, he may be able to recover all or part of the money withheld.

Instead of withholding the amount under (*b*) the tenant may apply direct to the County Court for an Order suspending this amount. In that case, he must satisfy the Court, by producing a certificate from the sanitary authority, or in some other manner, that the house is not in a reasonable state of repair.

The address of the sanitary authority is.....
.....

Note 3.

The maximum permitted increase under head (*c*) is 6 per cent. of the cost if the work was done before 2nd July, 1920, and 8 per cent. if done after that date. If the tenant claims that the work was unnecessary or the cost excessive, he can apply to the County Court for an order reducing the part of the increase in rent set out under (*c*), but an order can only be made if he was the tenant when the work was done and had not consented to it in writing, or was the first tenant after the work was done, and was not informed of the nature and cost of the improvements and the increased rent chargeable before taking the house.

Note 4.

The maximum permitted increase under head (*d*) is the increase in the current rates payable by the landlord over the corresponding amount paid in the rating period which included the 3rd August, 1914, or, if for some reason no rates were payable for that rating period, the period when rates first became payable thereafter.

Note 5.

Where part of a house is lawfully sub-let, the maximum permitted increase chargeable by the landlord of the whole house under head (*e*) is 5 per cent. of the net rent of the part sub-let; the maximum permitted increase chargeable by the tenant who has sub-let the part is 10 per cent. of the net rent of the part sub-let.

PART II.

Form of Notice to be inserted in every Rent Book, or similar document in respect of a house to which the Rent and Mortgage Interest Restrictions Acts apply.

1. Address of premises.....
2. Name and Address of landlord.....
3. Name and Address of agent (if any).....
4. The standard rent of the premises is.....per.....
5. The current rent includes £ s. d. per.....

in respect of the permitted increase of [40] per cent. of the net rent, part of which is in respect of the landlords liability for repairs.

6. If there is disagreement as to the rent properly chargeable, the landlord, tenant, or sub-tenant can apply to the County Court to settle the question.

7. If the tenant considers that the premises are not in a reasonable state of repair, he is entitled to apply to the sanitary authority for a certificate to that effect. Where a certificate is granted, and the tenant serves a copy of it on the landlord, the tenant may deduct from the rent the whole of the amount stated in paragraph 5 of this notice, until the landlord has executed the necessary repairs to the satisfaction of the sanitary authority. If however the landlord can prove to the County Court that the condition of the house is due to the tenant's neglect or default or breach of agreement, he can recover all or part of the money withheld.

Alternatively, the tenant may apply to the County Court for an Order reducing the rent. In that case, he must satisfy the Court, by producing a certificate from the sanitary authority or otherwise, that the house is not in a reasonable state of repair.

The address of the sanitary authority is.....
.....

8. If the tenant sub-lets part of the premises unfurnished he must give the landlord a statement in writing of the sub-, letting, giving particulars of occupancy, including the rent charged. The penalty for failing to do this without reasonable excuse, or for giving false particulars, is a fine not exceeding £10. The particulars must be given to the landlord within fourteen days after sub-letting, or if the rooms were already sub-let on the 18th July, 1933, not later than the 18th October, 1933. Where particulars have once been given to the landlord, it is not necessary to supply them again if the only change is a change of sub-tenant.

9. A landlord is entitled to apply to the County Court for an Order for possession against a tenant who is overcharging his sub-tenant, and where the County Court has already fixed the proper rent for a sub-tenancy, a tenant who overcharges his sub-tenant is liable to a fine of £100.

PART III.

Form of Application for Registration of a House under Section 2 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933.

Date .....

To the.....Council.

I hereby declare that to the best of my belief the house[s] of which particulars are set out below and of which I am the landlord, [is] / [are] [a] house[s] to which the Rent and Mortgage Interest Restrictions Acts had ceased to apply by virtue of Section 2 of the Rent and Mortgage Interest Restrictions Act, 1923, prior to the 18th July, 1933, and I accordingly make application for the registration of such house[s].

(Signature) .....
(Address) .....

‡Address of dwelling house.	Rateable Value on 1st [6th] April, 1931, if dwellinghouse was then a separately rated hereditament.

Note 1.

Applications for registration after the 18th October, 1933, can only be made pursuant to a certificate of the County Court under section 2 (2) of the Act of 1933. The certificate should accompany any such application.

Note 2.

Section 2 (6) of the Act of 1933 provides as follows :—

" If any person, with intent to deceive, knowingly makes any false statement calculated to lead to the belief that a dwellinghouse of which the rateable value on the appointed day did not exceed the respective amount mentioned in subsection (1) of this section is, by virtue of the provisions of the said section two of the Act of 1923, not a dwellinghouse to which the principal Acts apply, he shall be guilty of an offence and liable on summary conviction thereof to a fine not exceeding ten pounds or to imprisonment for a term not exceeding three months or to both such fine and imprisonment."

Given under the Official Seal of the Minister of Health this twenty-sixth day of July, nineteen hundred and thirty-four.

(L.S.) *J. N. Beckett*,
Assistant Secretary,
Ministry of Health.

‡ Sufficient particulars must be given to identify the dwellinghouse where it forms part only of a rateable hereditament.

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. W. G. EARENGEY, K.C., and Mr. E. H. C. WETHERED to be Judges of County Courts, and has made the following arrangements in connection with the vacancies caused by the retirement of Their Honours Judges Crawford, Herbert Smith and The Hon. W. B. Lindley : His Honour Judge Beazley, Oxford and Cambridge Club, 71, Pall Mall, S.W.1, to be Judge of Circuit 38 (Edmonton and Wood Green, Ilford, etc.) ; His Honour Judge H. J. ROWLANDS, Orchard Farm, Saxlingham, Nethergate, Norwich, to be Judge of Circuit 32 (Norwich, etc.) ; His Honour Judge EARENGEY, K.C., 1 Brick-court, Temple, E.C.4, to be Judge of Circuit 41 (Clerkenwell) ; His Honour Judge WETHERED, Albion-chambers, Bristol, to be Judge of Circuit 57 (Exeter, etc.). The appointments of Their Honours Judges Earengey and Wethered are dated the 1st September, 1934, and the orders for the transfer of His Honour Judge Rowlands to Circuit 32 and His Honour Judge Beazley to Circuit 38 came into operation on the 31st August, 1934, and the 1st September, 1934, respectively.

The Lord Chancellor has appointed Mr. K. T. S. DOCKRAY to be Registrar of the Manchester County Court, as from the 1st October, 1934, upon the retirement of Mr. Forrester Addie.

Mr. G. BARCLAY, K.C., has been appointed a Judge of the Court of Appeal in the Montreal District of the Province of Quebec, in succession to Mr. Justice Howard.

Mr. M. B. PARRY-JONES, solicitor, of High Wycombe, has been appointed Clerk to the Wycombe (Bucks) Rural District Council, in succession to Mr. B. L. Reynolds, who is retiring. Mr. Parry-Jones was admitted a solicitor in 1924.

Wills and Bequests.

Mr. Albert William Claremont, J.P., solicitor, of Hampstead, left £21,019, with net personalty £19,044.

Mr. Edgar Hosking, solicitor, of Oxton, Birkenhead, left £48,178, with net personalty £37,328.

Mr. Henry Shadforth, solicitor, of Edenbridge, left £42,083, with net personalty £38,432.

Mr. Arthur Whitehead, J.P., solicitor, of Salisbury, left £9,252, with net personalty £3,765.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 13th September, 1934.

	Div. Months.	Middle Price 5 Sept. 1934.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	113	3 10 10	3 3 4
Consols 2½%	JAJO	80½xd	3 2 1	—
War Loan 3½% 1952 or after	JD	105	3 6 8	3 2 8
Funding 4% Loan 1960-90	MN	116	3 9 0	3 1 10
Funding 3% Loan 1959-69	AO	99¼	3 0 5	3 0 9
Victory 4% Loan Av. life 29 years	MS	112⅝xd	3 11 0	3 6 4
Conversion 5% Loan 1944-64	MN	119⅜	4 3 9	2 11 3
Conversion 4½% Loan 1940-44	JJ	111¼	4 0 11	2 9 2
Conversion 3½% Loan 1961 or after	AO	104xd	3 7 4	3 5 6
Conversion 3% Loan 1948-53	MS	101⅜	2 18 11	2 16 10
Conversion 2½% Loan 1944-49	AO	97⅛xd	2 11 6	2 14 9
Local Loans 3% Stock 1912 or after	JAJO	92¾xd	3 4 8	—
Bank Stock	AO	371½	3 4 7	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	84½	3 5 1	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	92	3 5 3	—
India 4½% 1950-55	MN	112½	4 0 0	3 9 5
India 3½% 1931 or after	JAJO	93½xd	3 14 10	—
India 3% 1948 or after	JAJO	81xd	3 14 1	—
Sudan 4½% 1939-73 Av. life 27 years	FA	116	3 17 7	3 11 4
Sudan 4% 1974 Red. in part after 1950	MN	110	3 12 9	3 3 10
Tanganyika 4% Guaranteed 1951-71	FA	112	3 11 5	3 0 9
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	102½	2 18 6	2 15 0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	110	4 1 10	2 19 9
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	105	3 16 2	3 13 2
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	100	3 15 0	3 15 0
Canada 4% 1953-58	MS	108	3 14 1	3 8 4
Natal 3% 1929-49	JJ	98	3 1 3	3 3 5
New South Wales 3½% 1930-50	JJ	97	3 12 2	3 15 0
New Zealand 3% 1945	AO	98xd	3 1 3	3 4 5
Nigeria 4% 1963	AO	109	3 13 5	3 10 0
Queensland 3½% 1950-70	JJ	98	3 11 5	3 12 0
South Africa 3½% 1953-73	JD	104	3 7 4	3 4 3
Victoria 3½% 1929-49	AO	97xd	3 12 2	3 15 3
W. Australia 3½% 1935-55	AO	97xd	3 12 2	3 14 1
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	92	3 5 3	—
Croydon 3% 1940-60	AO	98xd	3 1 3	3 2 3
Essex County 3½% 1952-72	JD	105	3 6 8	3 2 8
*Hull 3½% 1925-55	FA	101	3 9 4	—
Leeds 3% 1927 or after	JJ	91	3 5 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	103xd	3 8 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	78½	3 3 8	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	92	3 5 3	—
Manchester 3% 1941 or after	FA	91	3 5 11	—
Metropolitan Consd. 2½% 1920-49	MJSD	97	2 11 7	2 15 0
Metropolitan Water Board 3% "A" 1963-2003	AO	93xd	3 4 6	3 5 1
Do. do. 3% " B " 1934-2003	MS	94	3 3 10	3 4 5
Do. do. 3% " E " 1953-73	JJ	98	3 1 3	3 1 10
Middlesex County Council 4% 1952-72	MN	112	3 11 5	3 2 4
‡ Do. do. 4½% 1950-70	MN	115	3 18 3	3 5 7
Nottingham 3% Irredeemable	MN	91	3 5 11	—
Sheffield Corp. 3½% 1968	JJ	104	3 7 4	3 6 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	109½	3 13 1	—
Gt. Western Rly. 4½% Debenture	JJ	119½	3 15 4	—
Gt. Western Rly. 5% Debenture	JJ	130	3 16 11	—
Gt. Western Rly. 5% Rent Charge	FA	128½	3 17 10	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	125½	3 19 8	—
Gt. Western Rly. 5% Preference	MA	112½	4 8 11	—
Southern Rly. 4% Debenture	JJ	108	3 14 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	108½	3 13 9	3 10 5
Southern Rly. 5% Guaranteed	MA	124½	4 0 4	—
Southern Rly. 5% Preference	MA	112	4 9 3	—

*Not available to Trustees over par. ‡Not available to Trustees over 115.
†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date ; in the case of other Stocks, as at the latest date.

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